APPLICATION OF

HIGH KNOB ASSOCIATES, L.C.,
HIGH KNOB OWNERS' ASSOCIATION, INC.
and **CASE NO. PUE960359**
HIGH KNOB UTILITIES, INC.

For approval of the transfer of a certificate of public convenience and necessity

REPORT OF HOWARD P. ANDERSON JR., HEARING EXAMINER

April 10, 1998

On December 11, 1996, High Knob Associates, L.C. ("HK"), High Knob Homeowners' Association ("the Association") and High Knob Utilities, Inc. ("HK Utilities" or "the Company") (collectively "the Applicants") filed an application pursuant to Section 56-265.3 D of the Code of Virginia requesting authority to transfer the certificate of public convenience and necessity authorizing HK to provide water service to residents of the High Knob Subdivision in Warren County, Virginia, to HK Utilities. By order dated May 9, 1997, the Commission appointed a Hearing Examiner to conduct all further proceedings, established a procedural schedule, and set this matter for hearing on October 1, 1997.

On May 30, 1997, the Applicants filed a motion requesting permission to amend their application to increase the connection fee from $500 to $700, to revise ordering paragraph (14) of the Commission's Order for Notice and Hearing to reflect the proposed increase in the connection fee, and to extend the deadline for the mailing of public notice. By Hearing Examiner's Ruling dated June 5, 1997, this motion was granted and HK Utilities was directed to give notice of its proposed tariff change.

Counsel appearing at the hearing on October 1, 1997, were Kenworth E. Lion, Jr. for the Applicants, and Marta B. Curtis for the Commission Staff. Protestants Joe and Hilda Mitchell appeared pro se. Proof of service and notice of publication were marked as Exhibit A and made a part of the record. A transcript of the proceedings will be filed with this Report.

SUMMARY OF THE HEARING RECORD

On August 9, 1995, the Commission granted Certificate of Public Convenience and Necessity No. W-279 to High Knob Associates, thereby granting it authority to provide water service to the High Knob Subdivision in Warren County, Virginia. The Commission approved the transfer of

assets of the water company to the Association on July 2, 1996. HK Utilities was created as a wholly owned subsidiary of the Association to operate the water system. On December 11, 1996, the Applicants filed an application requesting authority to transfer the certificate of public convenience and necessity to HK Utilities.

Five springs and one drilled well are the sources of water for the system. Storage is provided by three 10,000 gallon reservoirs, one 8,000 gallon reservoir, three 7,500 gallon reservoirs, one 6,000 gallon reservoir and one 2,000 gallon reservoir. The storage reservoirs are underground concrete tanks; chlorinators are located at each reservoir for disinfection. The design basis of the system is limited by spring yield to 54,720 gallons per day ("gpd") or 273 connections. At the end of 1996, the water system was serving 192 connections. According to the Virginia Department of Health, all system facilities appear to be in good condition.

Initially, the Company proposed no changes in the current rates, rules and regulations of service approved by the Commission in its last rate case, Case No. PUE930009. As noted above, the Company was granted permission, pending notice, to amend its application to include an increase in the service connection fee from $500 to $700.

At the beginning of the hearing, three public witnesses offered testimony. Bernice Lawson, expressed concern about encumbrances on the water system, but otherwise stated that she has had very few problems with her water service. (Tr. 6).

Norma St. John Hollister stated that it is virtually impossible to obtain information on the water system or administrative practices. Ms. Hollister recommends that an independent contractor familiar with small water systems be retained to manage the system. (Tr. 12). Citing several unfortunate incidences, Ms. Hollister submits that if correct information on practices and procedures of the utility had been disseminated to all customers, many incidents could have been prevented. (Tr. 14).

Another public witness, Robert Pitts, requested a continuance in the proceedings pending a decision from a circuit court judge concerning assets of the Company. This motion was denied. (Tr. 21).

Donald and Brenda Nemick and Harold and Marie Lewis filed Notices of Protest in this proceeding, but advised the court that they did not wish to participate in the proceeding. (Tr. 21, 22).

DISCUSSION

In her opening statement, Ms. Curtis advised the court that there is only one issue in controversy. In regard to the proposed connection fees, the Applicants disagree with Staff's recommendation that excess connection fees be placed in an escrow account to be used for capital improvement. At Staff's request, the Company provided actual cost information for each connection HK Utilities made, beginning in 1996, up to the time Staff filed its testimony in September of 1997.

The information included machine and labor time and rates, and a list of materials and supplies necessary to establish the water service connection. After reviewing the information, Staff determined that, on average, the Company's cost to connect water customers has not increased above $500 per connection. Staff, therefore, recommends that the service connection fee remain at $500 per water connection. (Ex. No. GGF-3, at 4).

Late Fees

During Staff's audit of the Company's books, it was discovered that customers who paid their bills late were being charged one and one-half percent on overdue balances plus a $10 late fee. The one and one-half percent charge on overdue balances is consistent with the Company's tariff and the Commission's Final Order dated January 10, 1977, in Case No. 19589, *Ex Parte, in re: Investigation to determine the reasonableness of certain practices and charges by public utilities* ("miscellaneous charges order"). The $10 late fee, however, is in excess of that allowed by the Company's tariff and the miscellaneous charges order. Staff instructed the Company to stop charging the late fee and to make refunds to customers. The Company has provided Staff with documentation that customers were overcharged $350 during the test year. These overcharges were refunded to customers through the July 1997 billing. In her prefiled testimony, Staff witness Frassetta recommended that the Company also be required to refund any late fees collected in excess of the one and one-half percent subsequent to the test period. (Ex. No. GGF-3, at 5). At the hearing, Mrs. Frassetta testified that she had received a refund report from the Company and that all refunds pertaining to overcharges of late fees have now been credited to customer bills. (Tr. 51).

Staff witness Armistead reviewed the Company's books and made the following recommendations:

1. That the Company be ordered to maintain a separate set of books for the utility in accordance with the Uniform System of Accounts for Class "C" Water Utilities;

2. That the Company depreciate plant and amortize contributions at a three percent composite rate;

3. That, if the Company collects a contribution in excess of the cost recorded to plant accounts, the excess contribution should be recorded to a deferred credit account and the cash should be escrowed for future capital improvements. Use of these escrow funds for any other purpose should require prior Commission approval; and

4. That the Company should maintain sufficient property records and documentation to support all plant additions including labor costs.

Ex. No. AWA-2, at 7, 8.

Company witness Peterson objects to Staff's recommendation regarding an escrow account for future capital improvements. If Staff's recommendation in this instance is adopted, Mr. Peterson contends that the Company will incur unnecessary additional administrative costs with no resulting benefit to the customers. Since the connection fee is based on average costs, the utility will not experience aggregate excess collections because, by definition, all costs will average out to only what is required to install the connections. (Ex. No. DAP-6, at 1, 2).

An escrow account is primarily needed when a company is charging in excess of cost. In this instance, the $500 fee reflects the average cost of a hook-up. Although it is doubtful that the Staff's proposed accounting requirement would result in a financial and recordkeeping burden, it is not necessary at this time. The Commission, in Case No. PUE930009, approved a cost-based connection fee without the requirement of an escrow account. In this case, the Company has been charging a $500 connection fee without an escrow account. If the Commission adopts the recommendation to maintain the connection fee at $500, I find that an escrow account is unnecessary.

Protestants

Protestants Joe and Hilda Mitchell are property owners and residents of the High Knob Subdivision. Hilda Mitchell is a former member of the High Knob Owners' Association Board of Directors. The Mitchells are concerned that the deeds transferring the water system are subject to encumbrances of approximately $950,000 secured by the water system. However, there is no evidence in the record regarding these alleged encumbrances.[1] Mrs. Mitchell refers to two draft deeds (Tr. 56) and states that there is a deed on file in the Warren County Courthouse (Tr. 64) which is not a general warranty deed, but makes a conveyance in fee simple.[2] Mrs. Mitchell surmises that this is not a general warranty deed because of encumbrances. (Tr. 57). Mrs. Mitchell testified that she is concerned that these encumbrances will result in tariff increases for the water system customers. (Tr. 58).

The Mitchells' testimony is confusing at best. If there are encumbrances on the utility's facilities, there is no evidence of it in this record. Even if the fact of encumbrances had been established, the potential impact on the Company's rates is outside the parameters of this proceeding. The case pertains to the transfer of the certificate of public convenience and necessity. Other than the request for an increase in the Company's connection fee, there is no proposal for a rate increase. Finally, as to any civil proceeding, there has been no showing of relevance or bearing on this proceeding.

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[1]The Mitchells introduced a deed (Ex. No. HCM-4), by which a lot in the High Knob Subdivision was conveyed subject to restrictive covenants. The deed contains no references to encumbrances and has no bearing on this case.

[2]Apparently, the transfer of the deeds or the deeds themselves, have been the subject of civil court proceedings. Mrs. Mitchell passed to the file of this proceeding a continuance order dated June 16, 1997, and signed by John E. Wetsel, Judge of the Circuit Court of Warren County, Virginia. The order states that Mrs. Mitchell is no longer a party to the suit. On cross-examination, Mrs. Mitchell stated that she was not aware that the suit had been dismissed in March of 1997. (Tr. 67).

Transfer of Certificate of Public Convenience and Necessity

Section 56-265.3 D of the Code of Virginia provides:

> If the Commission finds it to be in the public interest, upon the application of a holder of a water or sewer certificate, such certificate may be transferred . . . after such reasonable notice to the public and opportunity to be heard as the Commission by order may prescribe.

Staff witness Frassetta testified that, as of September 5, 1997, the Commission has received only one quality of service complaint related to low water pressure. A Staff investigation revealed that pressure at the meter was above the minimum required according to the Virginia Department of Health's waterworks regulations and was in compliance with the Company's tariff rules and regulations.

In 1996, the Commission received five customer complaints dealing with low pressure and water outages. Mrs. Frassetta explains that in the latter part of 1996, the utility experienced repeated equipment failures which caused the water outages. A Staff investigation determined that some of the outages were due to scheduled maintenance while other outages were caused by equipment failure due to normal wear and tear. In conclusion, Staff recommends that HK Utilities be granted a certificate of public convenience and necessity to provide water service to the High Knob Subdivision. (Ex. No. GGF-3, at 5, 6).

I find that the Company's application is in the public interest and should be granted. Pursuant to Commission order dated July 2, 1996 in Case. No. PUA960002, and a deed recorded in the Circuit Court of Warren County, Virginia, the High Knob water system was transferred to the Association on August 1, 1996. The Company is a wholly owned subsidiary of the Association and is the entity which will operate the water system. According to Company witness Peterson, the Company has a Class 3 system operator. (Tr. 75). Further, the Commission approved the Company's rates, rules and regulations of service in Case No. PUE930009 and the Company proposes no change in that tariff, other than the proposed increase in the connection fee.

FINDINGS AND RECOMMENDATIONS

Based on the application and the evidence presented in this case, I find that:

1. The certificate of public convenience and necessity to provide water service to the High Knob Subdivision should be transferred to HK Utilities;

2. The Company's request for an increase in its connection fee should be denied;

3. The Company should maintain a separate set of books for the utility in accordance with the Uniform System of Accounts for Class "C" Water Utilities;

4. The Company should depreciate plant and amortize contributions at a three percent composite rate;

5. Use of an escrow account for excess connection fees is not necessary at this time; and

6. The Company should maintain sufficient property records and documentation to support all plant additions, including labor costs.

In accordance with the above findings, ***I RECOMMEND*** that the Commission enter an order that:

1. ***ADOPTS*** the findings in this Report;

2. ***GRANTS*** the request for transfer of the certificate of public convenience and necessity to serve the High Knob Subdivision in Warren County, Virginia; and

3. ***DISMISSES*** this case from the Commission's docket of active cases.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fifteen (15) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P. O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all other counsel of record and to any party not represented by counsel.

Respectfully submitted,

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Howard P. Anderson, Jr.
Hearing Examiner